

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
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DAVID BEASLEY

Plaintiff

V

WILLIAM HOWARD

Defendant


Civil Action No. 1:19-cv-11058

JBS-KMW

**SUPPLEMENTAL BRIEF IN SUPPORT OF
PLAINTIFF'S OPPOSITION MOTION
TO VACATE DEFENDANT'S MOTION
TO DISMISS COMPLAINT.**

Clerk, U.S. District Court
Mitchell H. Cohen Building
U.S. Courthouse 4th and Cooper Sts.
Camden, NJ 08101
Honorable Jerome B. Simandle, U.S.D.J.
Honorable Karen M Williams U.S.M.J.

PLEASE TAKE NOTICE of supplemental brief with statement of facts in support of plaintiff's motion to vacate defendant's motion to dismiss complaint. Relying on Statement of Facts, letter brief and exhibits

/s/ 
David Beasley Plaintiff Pro-Se

July 8, 2019

CITED CASES

Christian Fellowship Church v Adidas AG (81 F.3d 986 (Fed Cir 2016)

Dastar Corp. v. Twentieth Century Fox Film Corp. 539 US 23 (2003

Two Pesos, Inc v Taco Cabana, Inc. 921 F. 987 (E.D. NY 1996)

Coach Leatherware Co. v. AnnTaylor, Inc. , 933 F. 2d 162, 168 (2d .
595 F.2d at 1198, 1201.

Norm Thompson Outfitters, Inc. v. General Motors Corp., 448 F.2d 1293, 1295
n.2 (9th...)

Vision Center 596 F.2d at 115..

Proudfoot Consulting Co. v. Gordon, 576 F.3d 1223, 1230 (11th Cir. 2009.

Am. Television & Commc'ns Corp. v Am. Commc'ns & Television Inc. 810 F.2d
1546, 1549 (11th Cir. 1987)

HGI Assocs., Inc. v. Wetmore Printing Co. , 427 F.3d 867, 873 (11th Cir. 2005).

CITED STATUTES

Lanham Act 15 USC§1125 Section 43 and section 43(a)

Fed. Rule Civil Procedure 12(b)6

July 8, 2019

AFFIDAVIT OF PLAINTIFF

I am David Beasley and I am the founder and creator of the singing group named the Ebonys.

I created and found this group and name in 1969 in Camden NJ.

I recorded the two hit songs on the Philadelphia International Records Label for Kenneth Gamble and Leon Huff of the Hall of Fame writing team of Gamble and Huff.

Our geographic location is Camden NJ and the Philadelphia PA.

Venues that have been hiring myself and my group the Ebonys are canceling appearances, performance jobs and award ceremonies after fifty years of service.

I am being blocked from receiving hall of fame recognition because cease and desist letters have been sent to interrupt my lifetime achievements.

/s/ David Beasley
David Beasley Plaintiff Pro-Se

STATEMENT OF FACTS

Plaintiff David Beasley started a singing group in Camden NJ in 1969 and named his group the Ebonys. The members of the group were founder and creator David Beasley, Clarence E. Vaughn, James Tuten, and Jennifer Holmes. Plaintiff registered The Ebonys name with the municipalities of his county and state government. See (EXHIBIT A)

Plaintiff David Beasley and the Ebonys recorded their first golden record for Gamble and Huff on Philadelphia International Records label (PIR) "It's Forever" in 1971 on their Album titled "The Ebonys." See (EXHIBIT B). Gamble and Huff went on and wrote over 3,000 hit records and many of them were written and produced for the Plaintiff and his group (The Ebonys) in Sigma Sound Studios.

Their hit records were recorded in Sigma Sound Studios in Philadelphia PA. There is currently the filming of a documentary titled Sigma Sound. This documentary has Gamble and Huff, David Beasley and The Ebonys along with all of the great artist and singing groups that ever recorded at Sigma Sound Studios.

Some of the artists are Michael Jackson, Patti Labelle, Nancy Wilson, Teddy Pendergrass, Harold Melvin and The Blue Notes, The Stylistics, The Delfonics, Blue Magic, Jerry Butler, Billy Paul, Sister Sledge. But the first and foremost to be recognized is David Beasley and The Ebonys.

David Beasley and the Ebonys have been honored by the city of Philadelphia, Camden NJ and many other locations and venues. The Philadelphia Phillies with Gamble and Huff honored David Beasley and The Ebonys for all that they had done for the Philadelphia community. See (EXHIBIT C) Honoring David Beasley and Th Ebonys for all of the great things the plaintiff has done for music and the community.

The defendant William Howard sent cease and desist letters attempting to derail the city of Philadelphia, Gamble and Huff or the Philadelphia Phillies from honoring David Beasley and The Ebonys.

Some years back when one of (The Ebonys) member James Tuten passed. Plaintiff temporarily hired Defendant from Tennessee to replace the deceased member and to sing in the plaintiff's singing group The Ebonys. Defendant's attitude and behavior was so disgruntled that plaintiff no longer wanted him in the group, which was David Beasley and The Ebonys singing group.

Disgruntled, angry and belligerent the defendant's egregious behavior retaliated and he formed his own group and named them the Ebonys also. Total disregard for the plaintiff who temporarily permitted the defendant to sing with his Ebonys singing group. Or the fact that (The Ebonys) singing group already existed.

The defendant filed and received a USPTO for the Ebonys name. Now has been sending cease and desist letters to David Beasley and The Ebonys he once worked for.

The defendant applied for and stole music royalty payments owed to David Beasley and The Ebonys. Theft by deception of royalties owed to the actual Ebonys members David Beasley, Clarence E. Vaughn, Jennifer Holmes and family of James Tuten..

Universal Community Center (UCC) in Camden NJ had been honoring David Beasley and The Ebonys in their hometown every year for 35 years and are now receiving cease and desist letters from the defendant and an alleged company Swing City Enterprises, Inc.

UCC along with many other venues are ceasing from hiring the plaintiff and his Ebonys after decades of working with them at these venues. The Governor of New Jersey was present but unaware of the issue with the defendant claiming ownership of David Beasley's Ebonys name. See (EXHIBIT E) Rutgers University of Camden NJ have received cease and

desist letters from the defendant informing them to cease and desist from having David Beasley and The Ebonys performing at the university.

The defendant is stealing royalty payments that do not belong to him and trying to claim the rights to all of David Beasley and The Ebony's music royalties. Stealing royalty money owed to David Beasley, Clarence E. Vaughn, Jennifer Holmes and the family of James Tuten . See (EXHIBIT D)

LEGAL ARGUMENT

PLAINTIFF'S CLAIMS ARE NOT PRECLUDED BY THE DOCTRINE OF RES JUDICATA OR THE DOCTRINE OF COLLATERAL ESTOPPEL

THIS IS NOT THE SAME CAUSE OF ACTION addressed to the United States Patent and Trademark Office (USPTO) or that which was decided by the Trademark Trial and Appeal Board (TTAB). And therefore res judicata and collateral estoppel is totally moot. Plaintiff also presents a crystal clear case of claims upon which relief can be granted and must be granted. Therefore any motion to dismiss by defendant pursuant to Federal Rule 12(b)(6) must unequivocally be denied.

PLAINTIFF IS SEEKING A MONETARY JUDGEMENT FOR DAMAGES IN THE AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS.

The plaintiff is ENTITLED to a judgement for monetary damages in the amount of five hundred thousand dollars for pain, suffering and damages caused by the defendant and his theft of plaintiff's royalties from Sound Exchange and other music streaming channels for music

and recordings that were not recorded, published or written by Defendant. See (EXHIBIT D) This is plausible and it is true.

Defendant stole and have been collecting, Royalties and payments owed to plaintiff David Beasley and The Ebonys. See (EXHIBIT D) . Defendant was disgruntled and conspired in bad faith to steal plaintiff's trademark rights and all the royalty payments owed to the plaintiff in retaliation for being dismissed from the plaintiff's singing group The Ebonys . Also with the name confusion it is now causing overlapping royalty payment fees. Thus causing more monetary damage to the plaintiff. See (EXHIBIT D)

JUDICIAL NOTICE

A MISTAKE HAS BEEN MADE AND THE DEFENDANT'S EBONYS TRADEMARK NAME MUST BE ABROGATED

The United States District Court must abrogate the defendant's USPTO Ebonys singing group trademark name.

There was already a singing group of Ebonys in existence before the defendant filed and registered a USPTO trademark for the same name.. A mistake has been made., . The only way to rectify this mistake is for the United States District Court to abrogate defendant's USPTO Ebonys trademark name.

The Ebonys trademark is the plaintiff's already unregistered trademark protected under section 43(a) of the Lanham Act. Therefore the defendant's USPTO trademark must be abrogated. A MISTAKE HAS BEEN MADE.

Plaintiff's first use in commerce of his singing group the Ebonys was January 1, 1969 and every year there after.. Plaintiff has Lanham Act protection under Section 43 and 43(a) of the Lanham Act. There is

already protection of an unregistered Ebony's trademark for the plaintiff. Here a mistake has been made and defendant's trademark must be abrogated to correct the mistake.

The Ebony's created and founded by David Beasley in the state of New Jersey in the year of 1969. Giving priority use to an already established Ebony's singing group. See (EXHIBIT A)

Section 43(a) prohibits a broader range of practices than does §32, which applies to registered marks, but it is common ground that §43(a) protects qualifying unregistered trademarks.

An unregistered trademark can be enforced under state common law, or if it has been registered in a state, under that state registration system...

"[t]he federal system of registration and protection does not preempt parallel state law protection, either by state common law or state registration" and "[i]n the vast majority of situations, federal and state trademark law peacefully coexist" ...

Justice Samuel Alito of the United States Supreme Court (in own his words, and citing prior Court decisions and trademark law experts); "The principle underlying trademark protection is that distinctive marks-words, names, symbols, and the like-can help distinguish a particular artisan's goods from those of others."

A trademark "designate[s] the goods as the product of a particular trader" and "Protect[s] his goodwill against the sale of another's product as his." This helps the consumer to identify what goods and services they are purchasing.

In the recording industry and music business all of these consumers know about David Beasley and The Ebony's who recorded in Sigma

Sound Studios on (PIR). See (EXHIBIT B) And these recordings are being sold every day., today and yesterday.

Defendant's attempt to derail the plaintiff's legacy and performing rights, to steal the plaintiff's name and royalties. Must be ceased. Defendant's registered Ebony's trademark must be abrogated. The Plaintiff already had unregistered trademark protection and ownership of his popular singing group The Ebonys name

Therefore the US District Court must "RECTIFY THE MISTAKE" and abrogate defendant's Ebony's singing group trademark which cannot take precedent or preempt the protection of the plaintiff's unregistered trademark ownership of The Ebonys singing group which existed first.

Trademarks that are already protected under section 43 of Trademark (Lanham Act 15 USC§1125).Unregistered Trademarks 15 USC§1125(a) creates a civil cause of action for claims of false designation of origin and false advertising. This provides federal protection for unregistered marks. Marks not registered with the United States Patent and Trademark Office (USPTO) but may be protected at the state level by common law or statutes associated with unfair competition

In *Dastar Corp. v. Twentieth Century Fox Film Corp.* 539 US 23 (2003) Dastar's sale of campaigns without proper credit to the Crusade television series constitute "reverse PASSING OFF" inviolation of §43(a) of the Lanham Act. *Two Pesos, Inc v Taco Cabana, Inc* see..

Unregistered trademark, or trade dress and concludes that such a mark or dress should receive essentially the same protection as those that are registered. In *Grupke v Linda Lori Sportswear, Inc.* 921 F. Supp. 987 (E.D. NY 1996) concludes that there remains an issue of facts to whether they are effectively identical. To the extent that the plaintiffs claim 'passing off' the court will deny summary judgement. ...plaintiffs registered copyright, in count II that defendants willfully violated the Lanham Act by using a reproduction of plaintiffs' copyrighted drawing and infringing their UNREGISTERED TRADEMARK and their...protects an UNREGISTERED TRADEMARK and trade dress against infringement. See *Coach Leatherware Co. v. AnnTaylor, Inc.*, 933 F.2d 162, 168 (2d.

Deceptive use...to designate falsely the origin of goods (passing off). 595 F.2d at 1198, 1201. New West also ...alleging infringement of an unregistered trademark. See *Norm Thompson Outfitters, Inc. v. General Motors Corp.*, 448 F.2d 1293, 1295 n.2 (9th...) sued appellant Lindeburg and Co. (Lindburg), for trademark infringement arising out of Lindurg's manufacture and sale of jewelry bearing the job's Daughters insignia. The district judge granted. USC§ 1125 section 43 and 43(a).

Ebonys singing group name. “ A MISTAKE WAS MADE.”

“After a bench trial, we review the district court’s conclusion of law de novo and district court’s factual findings for clear error.” Proudfoot Consulting Co. v. Gordon, 576 F.3d 1223, 1230 (11th Cir. 2009). “ The existence of secondary meaning is a question of fact,” which we review “ under the clearly erroneous standard.” Am.Television & Commc’ns Corp. v Am Commc’ns & Television Inc . 810 F.2d 1546, 1549 (11th Cir. 1987). A factual finding is clearly erroneous “ if, after viewing all the evidence , we are left with the definite and firm conviction that a MISTAKE HAS BEEN COMMITTED.” HGI Assocs., Inc. v Wetmore Printing Co., 427 F.3d 867, 873 (11th Cir. 2005)

Within the jurisdiction of the United States District Court the defendant’s Ebonys trademark number 4,170, 469 must be abrogated, the only remedy to correct the mistake that has been committed.

JUDICIAL NOTICE

And in *Christian Fellowship Church v Adidas AG* the sale of two hats amounting to 38.34 to a church member from another state was sufficient evidence for first use in commerce. Plaintiff's first use in commerce was January 1969 and first massive record sales were 1971 . See (Exhibits B & C).

In an appeal from a bench trial, we review a district's court's conclusion of law de novo and its factual finding for clear error. *Tartell v Fla. Sinus & Allergy Ctr.. Inc.*, 790 F.3d 1253, 1257 (11th Cir. 2015). A factual finding is clearly erroneous if, after viewing the totality of the evidence, the court is left with a definite and firm conviction that a mistake was made. *Id.*

Under the Lanham Act, 15 USC§1114(1), a defendant is liable for trademark infringement if the plaintiff shows (1) that its mark has priority and (2) that the defendant's mark is likely to cause consumer confusion. *Frehling Enter., Inc. v. Int'l Select Grp., Inc.*, 192 F.3d 1330, 1335 (11th Cir.1999). Recent changes in section 43(a) broaden what acts violate the Lanham Act. 171 In 1988, Congress passed The Trademark Revision Act of 1988, 172 substantially rewriting section 43(a). 173 With the changes , section 43() became the "premier federal vehicle for asserting infringement of unregistered trademarks, service marks, trade names and trade dress ..." 174 additionally, the Congress codified the case law by granting the same remedies to unregistered mark owners that infringed registered mark owners receive. 175.

A mistake was been permitted and with JUDICIAL NOTICE it is prima facie "THAT A MISTAKE WAS MADE."

CONCLUSION

Defendant's motion to dismiss pursuant to Federal Rule 12(b)6 must be vacated. Res Judicata and collateral estoppel do not apply, they are moot and must be denied. There is a new cause of action and there is also a claim stated upon which relief can be granted.

Plaintiff is entitled to the monetary damages of five hundred thousand dollars resulting in Defendant's theft of royalties from Sound Exchange and other streaming networks. Also from venues that received cease and desist letters from defendant cancelling plaintiff's jobs in his geographic region after decades of performing.

Plaintiff's Ebony's name already had unregistered trademark common law protection, state protection and protected under federal trademark law section 43 and 43(a) of the Lanham act. (15 USC §1125; section 43 and 43(a) before the defendant filed a USPTO trademark for the same Ebony's name for the same purpose. Therefore to correct the mistake the defendant's USPTO trademark must be abrogated.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DAVID BEASLEY

Plaintiff

V

WILLIAM HOWARD

Defendant

**Civil Action No. 1:19-cv-11058-
JBS-KMW**

ORDER

It is upon this day_____1019 that the plaintiff's opposition
motion to deny the defendant's motion to dismiss res judicata and
collateral estoppel pursuant to Federal Rule 12 (b) 6 is hereby
Granted_____.Denied_____.

/s/_____
USDJ

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CERTIFICATION OF SERVICE

**Civil Action No. 1:19-cv-11058-
JBS-KMW**

I do hereby certify that I have delivered a copy to all of the listed parties and courtesy copy to Honorable Judge Jerome Simandle USDJ and Honorable Karen M Williams USMJ.

Clerk United States District Court
U.S. Courthouse 4th and Cooper Streets
Camden NJ 08101

Frank A. Natoli
Natoli -Legal, LLC
305 Broadway, 7th Floor
New York, New York 10007

Moshe D.Lapin
Lapin Law Firm
300 E. Lombard Street
Suite 840
Baltimore, MD 21202

Attorneys for the Defendant William Howard

Dated July 8, 2019

/s/ David Beasley
David Beasley-Plaintiff Rose

EXHIBIT A

I, THE TREASURER THE STATE OF NEW JERSEY, DO HEREBY
CERTIFY THAT

DAVID S. BEASLEY
1801 LAUREL ROAD - UNIT 612
LINDENWOOD NJ 08021

DID ON THE 7TH DAY OF MARCH A.D. 2003 FILE IN THIS
DEPARTMENT

SERVICE MARK
MARK REG NUM : 21286

THE EBONYS
ENTERTAINMENT/SINGING GROUP

CLASSIFICATION GROUP -: SERVICES
CLASS : 041 EDUCATION AND ENTERTAINMENT

RENEWAL DATE: 03/08/2018
EXPIRATION DATE: 03/07/2023
DATE OF FIRST USE IN NEW JERSEY: 01/01/1969
DATE IN USE ELSEWHERE: 01/01/1969

AS BY THE STATUTES OF THIS STATE REQUIRED.



IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SET MY HAND AND AFFIXED
MY OFFICIAL SEAL AT TRENTON, THIS
8TH DAY OF MARCH
A.D. 2018 .

A handwritten signature in cursive script, appearing to read "Elizabeth Maher Muoio".

Elizabeth Maher Muoio
Acting State Treasurer

Certificate Number: 140333044

Verify this certificate online at

http://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp



NEW JERSEY DEPARTMENT OF STATE
DIVISION OF COMMERCIAL RECORDING
ORIGINAL APPLICATION TO REGISTER
A TRADE OR SERVICE MARK

TMSM-01

This form may be used by applicants seeking to register a State trade or service mark pursuant to NJSA 36. Applicants are responsible for strict adherence to all requirements set forth in State law. (PLEASE REFER TO INSTRUCTIONS ON REVERSE SIDE)

1. Mark Type: (check one) _____ Trade Mark _____ ~~XXXX~~ Service Mark
2. Name and Description of Mark: (list the term that constitutes the mark or, in the case of a design mark, provide a brief description of its appearance)

THE EBONY'S

3. Description Of The Goods Or Services Involved:

ENTERTAINMENT/SINGING

4. Classification Number(s): (Minimum of one)

5. Applicant Information:

- a. Name: DAVID S. BEASLEY
- b. Business Address: 612 TIMBERCREEK CONDOS
LINDENWOLD, NJ 08021
- c. Applicant is: (check one) ☒ An Individual _____ Corporation _____ Partnership _____ Other Business Entity
- d. If applicant is a corporation, partnership or other business entity, list the home state:
N/A
- e. If applicant is a partnership, list the names of all general partners:
N/A

6. Assignee Information: (if applicable, provide assignee name/address)

- a. Name: N/A
- b. Address:

7. Dates: Date First Used in New Jersey (must be entered) 1969 Date First Used Elsewhere: 1969

8. Signature(s) and Statement of Ownership: (verification required)

The applicant attests that he or she is the owner of the mark, and that the mark is in use in this State, and that, to his or her knowledge, no other person has registered the mark, either with the US Patent and Trade Mark office or with the Secretary of State, or has the right to use the mark or a mark in such near resemblance as to be likely, when used in connection with the goods or services of such other person, to cause confusion, to cause mistake, or to deceive.

David Beasley
 (Signature of Applicant, or a Member of the Firm,
 or an Officer of the Corporation or Business Applying)

5/16/97
 (Date)

(Assignee, if Applicable)

(Date)

Subscribed and sworn to before me, Rose D. Giuffre, a Notary Public,
 this 16th day of May, A.D. 1997.

Rose D. Giuffre
 (Notary Public)

"ROSE D. GIUFFRE
 Notary Public of New Jersey
 My Commission Expires 11/28/98"

Note: Attach to this application: 1) a drawing of the mark; and 2) three (3) specimens showing the mark as actually used.

EXHIBIT B



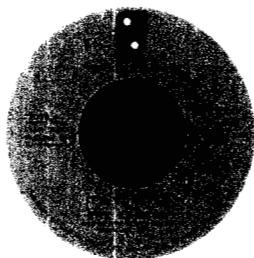
philadelphia international records ebony's its forever record photo



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SafeSearch

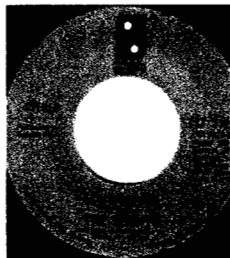
the ebony's 40th anniversary 45 rpm label I huff stereo mono amazon david beasley discogs harold



Vinyl, 7", 45 RPM, Single, Styre...
amazon.com



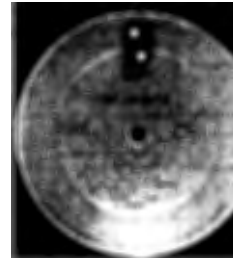
45cat - The Ebony's - It's Foreve...
45cat.com



The Ebony's - It's Forever / S...
discogs.com



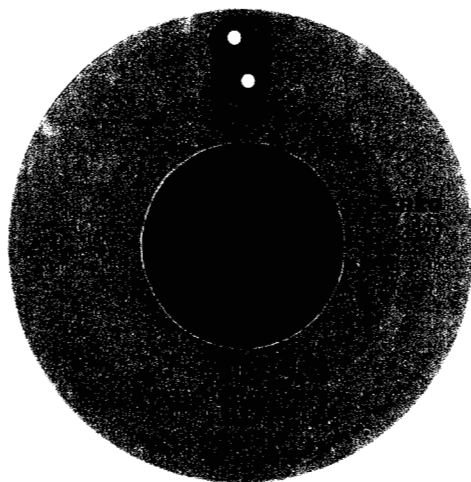
Vinyl, 7", 45 RPM, Single, Pr...
discogs.com



The Ebony's The Ebony's vin...
amazon.com



45cat - The Eb...
45cat.com



600 x 603 - Images may be subject to copyright. Learn More

The Ebony's - It's Forever (Vinyl)
Discogs

The Ebony's - It's Forever

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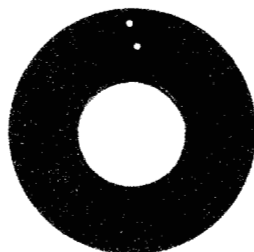
Get help - Send feedback



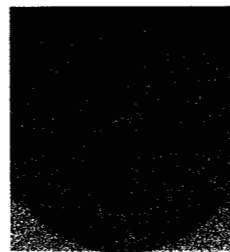
discogs.com



45cat.com



45cat.com



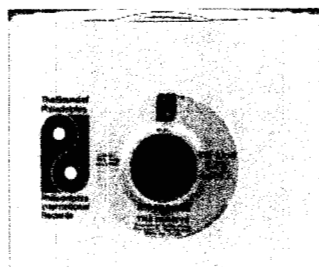
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discogs.com



discogs.com



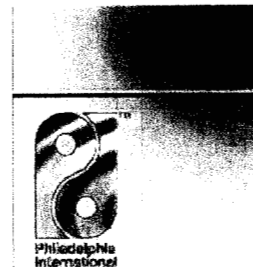
discogs.com



45cat.com



discogs.com



discogs.com



discogs.com

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All Categories

eBay Music Records

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THE EBONYS 45 Determination / Do It PHILADELPHIA INT'L Soul NEAR-MINT

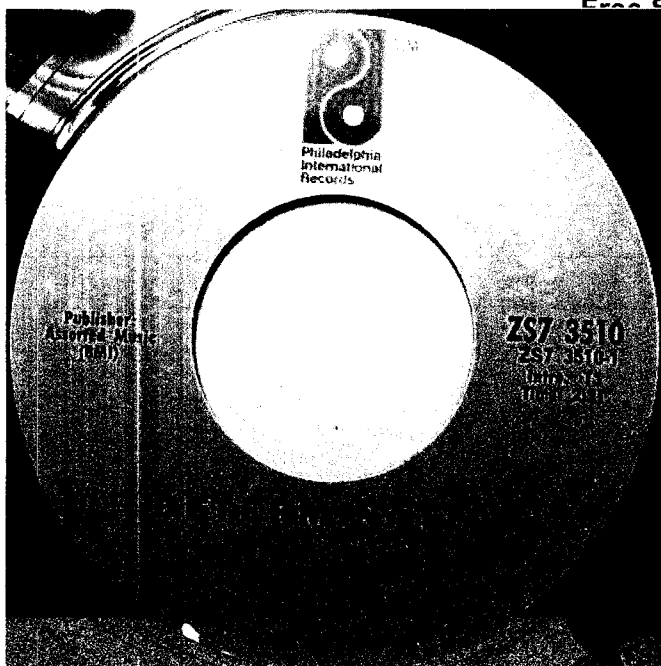


\$15.00

Free Shipping

Qty :

1



by Friday, Jul 12 from Middle
New York

and condition

day returns - Free returns

Philadelphia International RECORDS."

Full description

Details

Add to cart

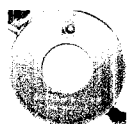
Watch

Sold by

lotsofrecords (53760)

99.8% Positive feedback

Contact seller



THE EBONYS 45 Determination / Do It PHILADELPHIA INT'L Soul NEAR-MINT

Add to cart

Legacy PFRLP8 Dark Side
of the Moon by Pink Floyd...

\$21.99 New

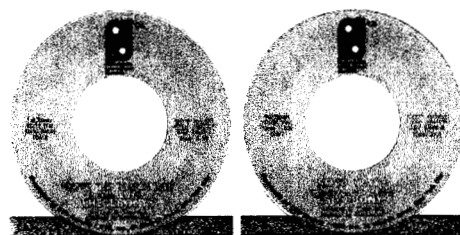
When We All Fall Asleep
Pale Yellow Colored Vinyl ...

\$19.97 New



Save on Records ⓘ

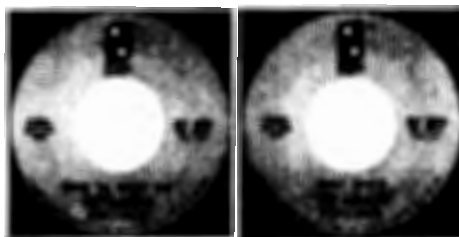




Zoom In

Permalink

Edit Images



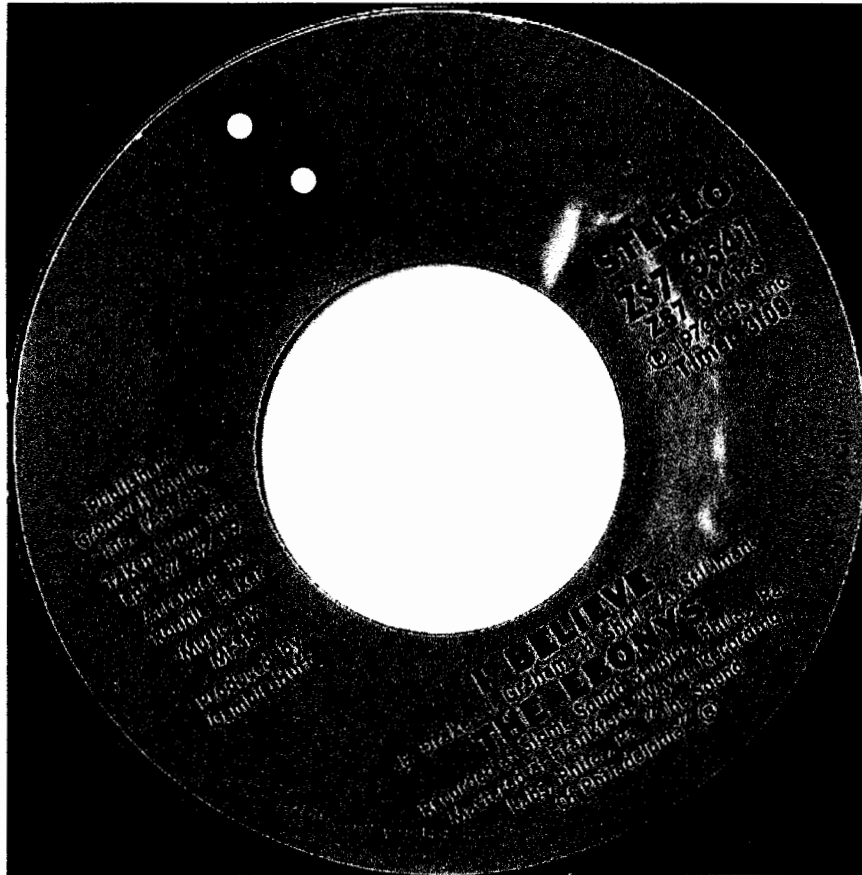
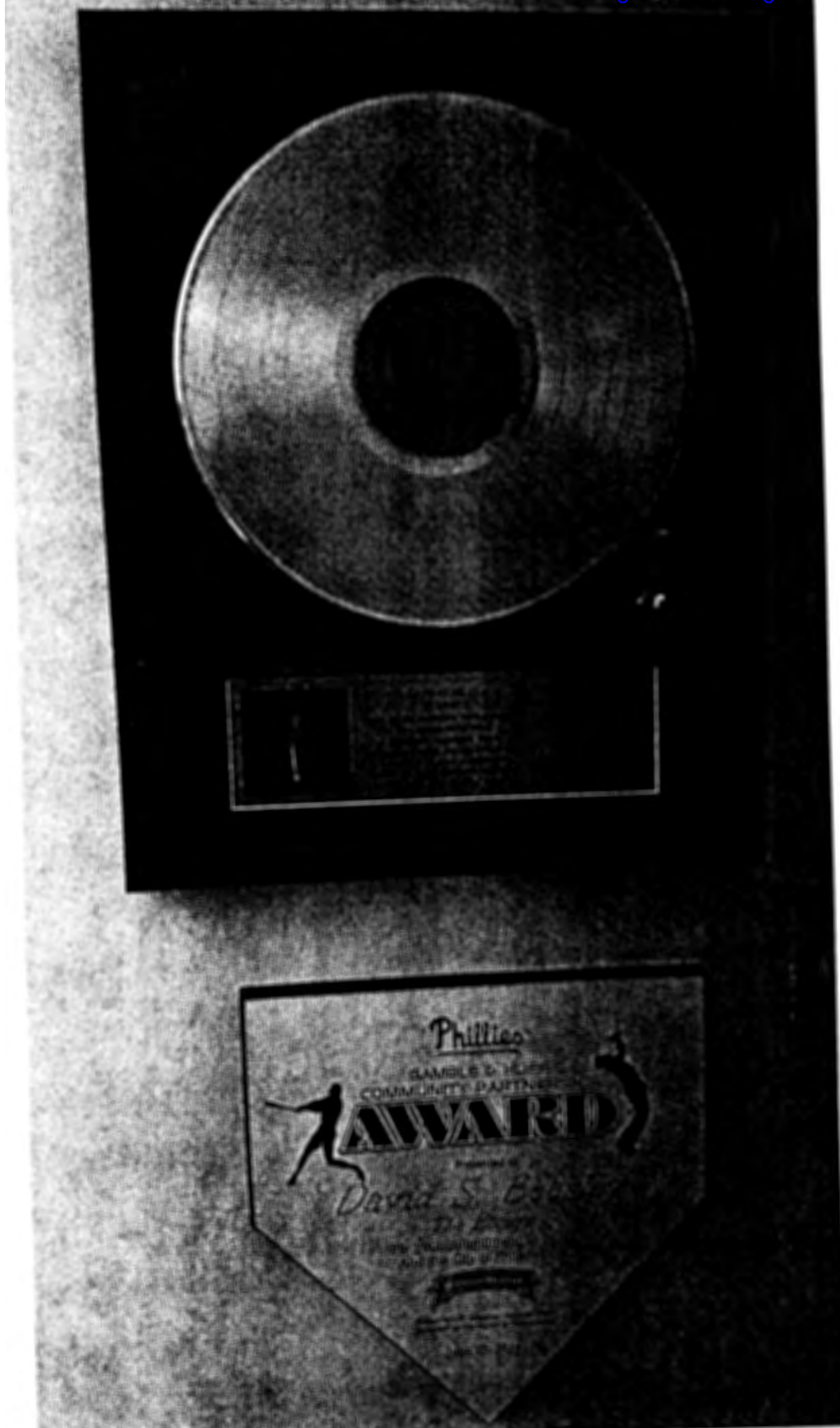
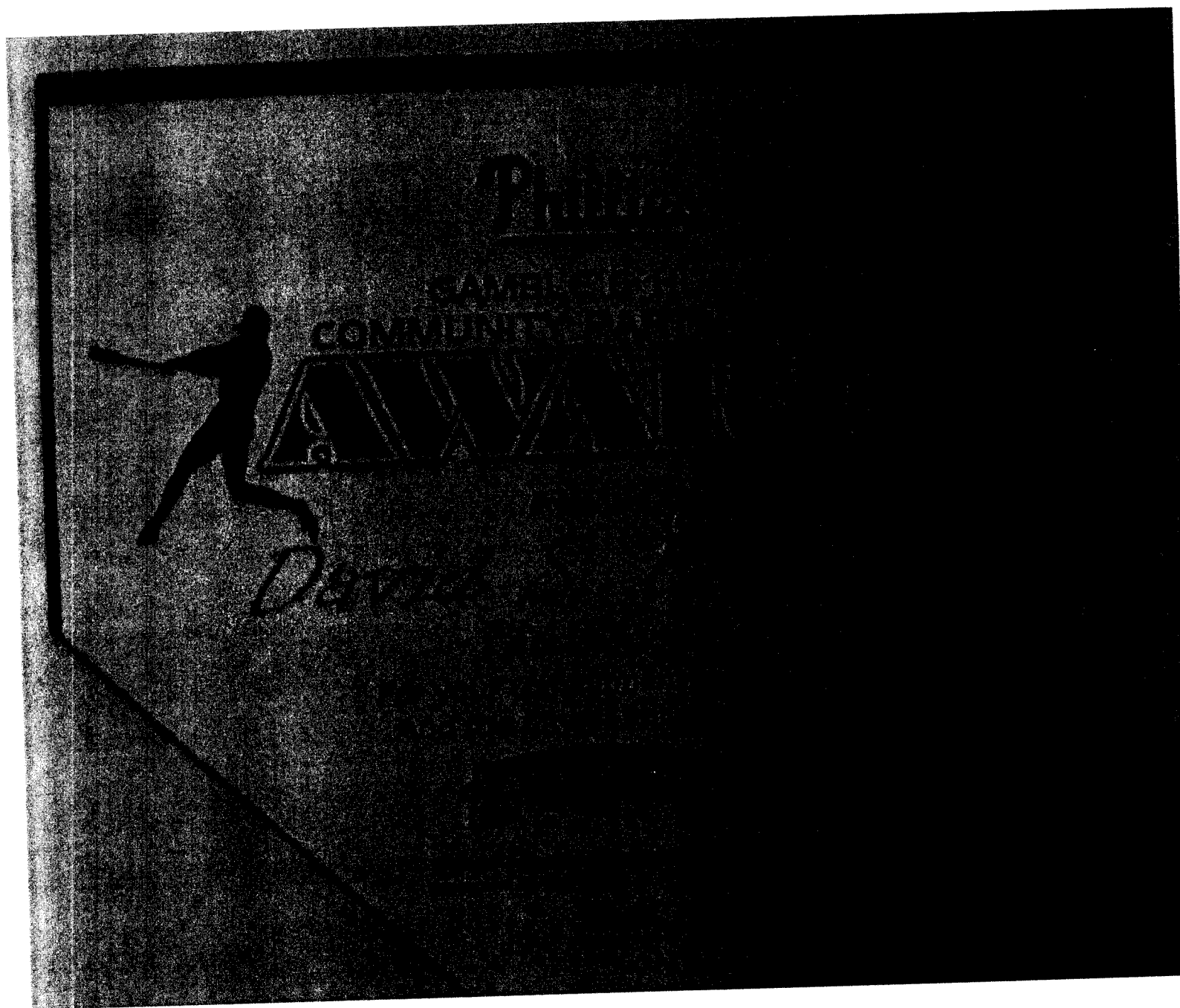


EXHIBIT C







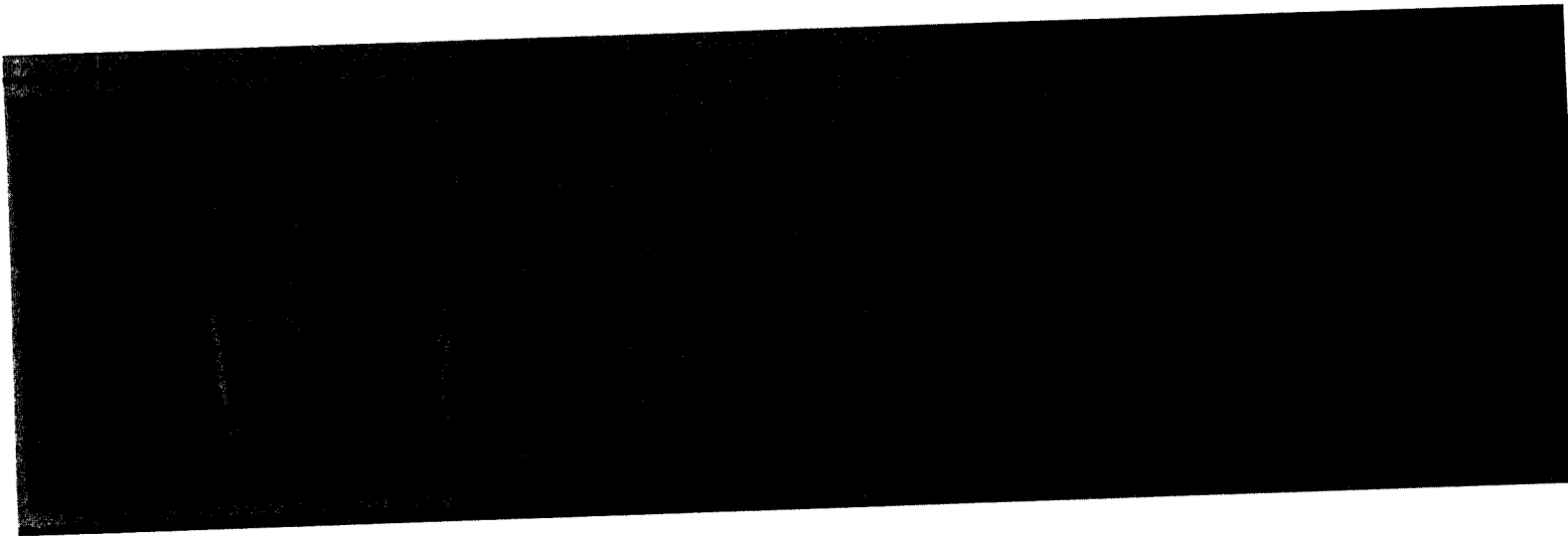


EXHIBIT D

(4)



May 20, 2010

The Ebonys
c/o David Beasley
1801 Laurel Road
Lindenwold, NJ 08021

Re: Royalty Statement for PE 12/31/09

Mr. Beasley,

Enclosed please find the most current Ebonys Royalty Statement for ***Period Ending December 31, 2009*** for The Ebonys. Thank you for providing us the necessary contact information needed for future Ebonys royalty statements. Pursuant to our email and phone correspondence, it is our understanding that you are an official and legal representative of the group and are authorized to receive information on the group's behalf.

For any further questions, please give us a call at (215) 985-0900.

Sincerely,

Charles B. Gamble
Executive Vice President
Philadelphia International Records

Cc: Royalty Administration

6/16/2019

Gmail - Fwd: SoundExchange Overlapping Artist Claim: THE EBONY'S ref:_00D301FiR0_50013tm4Kk:ref - RESPONSE FROM JOHN LUONGO o...

Kind regards,

John

John P. Luongo

**John Luongo President/CEO - Trecter Entertainment, LLC.
A division of John Luongo Management Recordings, LLC.
Exclusive Worldwide Licensing Representative/ Royalty Recovery**

Mobile: 1-917-213-1699

Email: Luongo.john@gmail.com

Twitter: Luongojohn

Skype: Johnluongo

On Fri, Jun 10, 2016 at 2:45 PM, John Luongo <luongo.john@gmail.com> wrote:

Dear William,

As the legal representative of Clarence E. Vaughn, of the Ebony's, I hereby attest to the fact that he is a legitimate Featured Artist and original member of the band, holding a legal right to his claim of 25% of the digital performance royalties.

Furthermore, only the following members of said band, the Ebonys, are entitled to receive a percentage in equal shares of 25%:

**Clarence E. Vaughn
James Tutten
Ms. Jennifer Holmes
David Beasley**

The parties above are all legally entitled to their rightful share of the Featured Artist Digital Performance Royalties and anyone outside of these individuals attempting to collect, make a claim or representing they are entitled to a Featured Artist Digital Performance Royalty is making a false claim which has serious consequences involved.

It is my intention to resolve this matter amicably, but for that to be the case, I demand all rights of claim to be immediately dropped and a notification sent to Brandon Kyker of SoundExchange, here copied by return email to that effect.

Additionally arrangements must be made for all monies erroneously collected from SoundExchange, starting from the inception of the account up to the last payment received, to be immediately returned so it may be rightfully distributed amongst the verified legal claimants.

I look forward to hearing from and hope that we can resolve this serious matter in the easiest and least disruptive manner possible. My number and email are included to expedite the matter.

Kind regards,

John

John P. Luongo

**John Luongo President/CEO - Trecter Entertainment, LLC.
A division of John Luongo Management Recordings, LLC.
Exclusive Worldwide Licensing Representative/ Royalty Recovery**

Mobile: 1-917-213-1699

Email: Luongo.john@gmail.com

Twitter: Luongojohn

Skype: Johnluongo

6/16/2019

Gmail - Fwd: SoundExchange Overlapping Artist Claim: THE EBONYs ref:_00D301FiR0._50013tm4Kk:ref - RESPONSE FROM JOHN LUONGO o...



John Luongo <luongo.john@gmail.com>

**Fwd: SoundExchange Overlapping Artist Claim: THE EBONYs
ref:_00D301FiR0._50013tm4Kk:ref - RESPONSE FROM JOHN LUONGO obo Clarence
E. Vaughn (6-15-16) - FYI**

John Luongo <luongo.john@gmail.com>
To: Clarence Vaughn <jingles1951@gmail.com>

Thu, Jun 16, 2016 at 1:22 PM

Good Morning Clarence,

Just as an FYI, here is the email which I sent to the party claiming all digital performance royalties from Ebony's.

I am awaiting a response and am optimistic that I will get justice for you.

Kind regards,

John

John P. Luongo

**John Luongo President/CEO - Trecter Entertainment, LLC.
A division of John Luongo Management Recordings, LLC.
Exclusive Worldwide Licensing Representative/ Royalty Recovery**

Mobile: 1-917-213-1699

Email: Luongo.john@gmail.com

Twitter: Luongojohn

Skype: Johnluongo

----- Forwarded message -----

From: **John Luongo** <luongo.john@gmail.com>

Date: Wed, Jun 15, 2016 at 1:25 PM

Subject: Re: SoundExchange Overlapping Artist Claim: THE EBONYs ref:_00D301FiR0._50013tm4Kk:ref - RESPONSE FROM JOHN LUONGO obo Clarence E. Vaughn (6-15-16)

To: "williamsSmokeHoward@comcast.net" <williamsSmokeHoward@comcast.net>

Cc: Brandon Kyker

Dear Mr. Howard,

I on Friday June 10, 2016 you received notification that we are challenging your claim to collect any of the digital performance royalties distributed by SoundExchange.

As of this date, you have failed to reply and have now been informed that SoundExchange has stopped all royalty disbursements on this account until this issue is resolved.

I have in my possession the original recording contract for the Ebony's and all parties who are legally entitled to the SoundExchange Digital Performance Royalties for that group. You appear nowhere on that document and have no legal rights to collect as you have been doing.

You are hereby notified, if this is not resolved in the amicable manner which I and my client would prefer, you will leave me with no option but to pursue all legal actions to protect the rights of my client and seek any damages and payments due to him.

I highly suggest you address this serious issue in an expedited manner and respond with an emailed notification to Brandon Kyker of SoundExchange, who is here copied, and myself stating that you have dropped any and all claims you have previously made to the Repertoire of the Ebony's.

I await your immediately response.

EXHIBIT E

On Feb 10, 2016, at 1:03 PM, Kristin R. Walker <krwalker@camden.rutgers.edu> wrote:

Good Afternoon -

Hope all is well! Yesterday, Rutgers University received a "Cease & Desist" order from Swing City Recording Enterprises, Inc. which references either a musical act or an image related to your February 19th Love Jam that'll be held in Rutgers University-Camden's Gordon Theater. I've scanned the entire correspondence and attached it. If you'd like the original documents please let me know.

I am sure you're going to contact Swing City Enterprises, Inc. Would you please provide me with a copy of your written response to Swing City Enterprises, Inc. so I can put it in our files?

If you want to call me, feel free. Candidly, this is a new one to me! I've never seen a Cease & Desist order.

Good Luck - Kristin

Kristin R. Walker
Events Office Director
211 North Fifth Street, First Floor
Camden, NJ 08102

Direct: krwalker@camden.rutgers.edu <image003.png> **Main:** reserve@camden.rutgers.edu

Direct: [856.225.6325](tel:856.225.6325) <image003.png> **Main:** [856.225.6162](tel:856.225.6162) <image003.png> **Fax:** [856.225.6196](tel:856.225.6196)

Visit: <http://events.camden.rutgers.edu/>



SWING CITY RECORDING ENTERPRISE, INC
104 S. Glenwood Ave
Aldan, PA 19018
610-626-2781
smccombs123@comcast.net

Oct 20, 2016

VIA CERTIFIED MAIL

Unity Community Center
1544 Mt. Ephraim Ave
Camden, NJ 08104

Re: 2nd Notice of Cease & Desist use of Trademark/False, Deceptive Advertising

To Whom It May Concern:

Unity Community Center: Robert Dickerson, Wanda Dickerson, & Ronsha Dickerson,

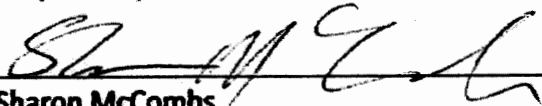
It has come to our attention that your company has promoted an event on October 15th or 16th, 2016 (Reference copy of enclosed flyer). The musical group identifying themselves as "EBONYS". Your flyer (advertisement) is deceptive. The presence of the name itself, in a distinctive font, prominently positioned in the flyer is considered a necessary implication and is a recognized doctrine in false advertising law and an infringement on our trademark. Mr. Howard has not granted permission to anyone or any other group to use the trademarked name or any derivation thereof.

Advertisement of any group using the trademark name, The Ebonys, violates federal trademark law. The Lanham Act (15 U.S.C. 1114; Section 32) states that you can be held liable in a civil action by the registrant (Mr. Howard). Under subsection (b) hereof, the registrant shall be entitled to recover profits or damages if the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

This letter serves as a formal notice for you and your company to immediately Cease and Desist use of any infringement on The Ebonys trademark, including any name which is a derivation of the trademark. This group has, without permission, infringed on "The Ebonys" Trademark by using a mark that is a "Likelihood of Confusion", similar in appearance, sound, connotation, and commercial impression. The mere addition of a term to a registered mark does not eliminate the similarity, nor does it overcome a likelihood of confusion under Trademark Act Section 2(d).

Please be advised that Mr. William H. Howard, a member of the musical group, The Ebonys, owns said trademark name with the United States Patent and Trademark Office. (Trademark number is 4,170,469).

Respectfully,

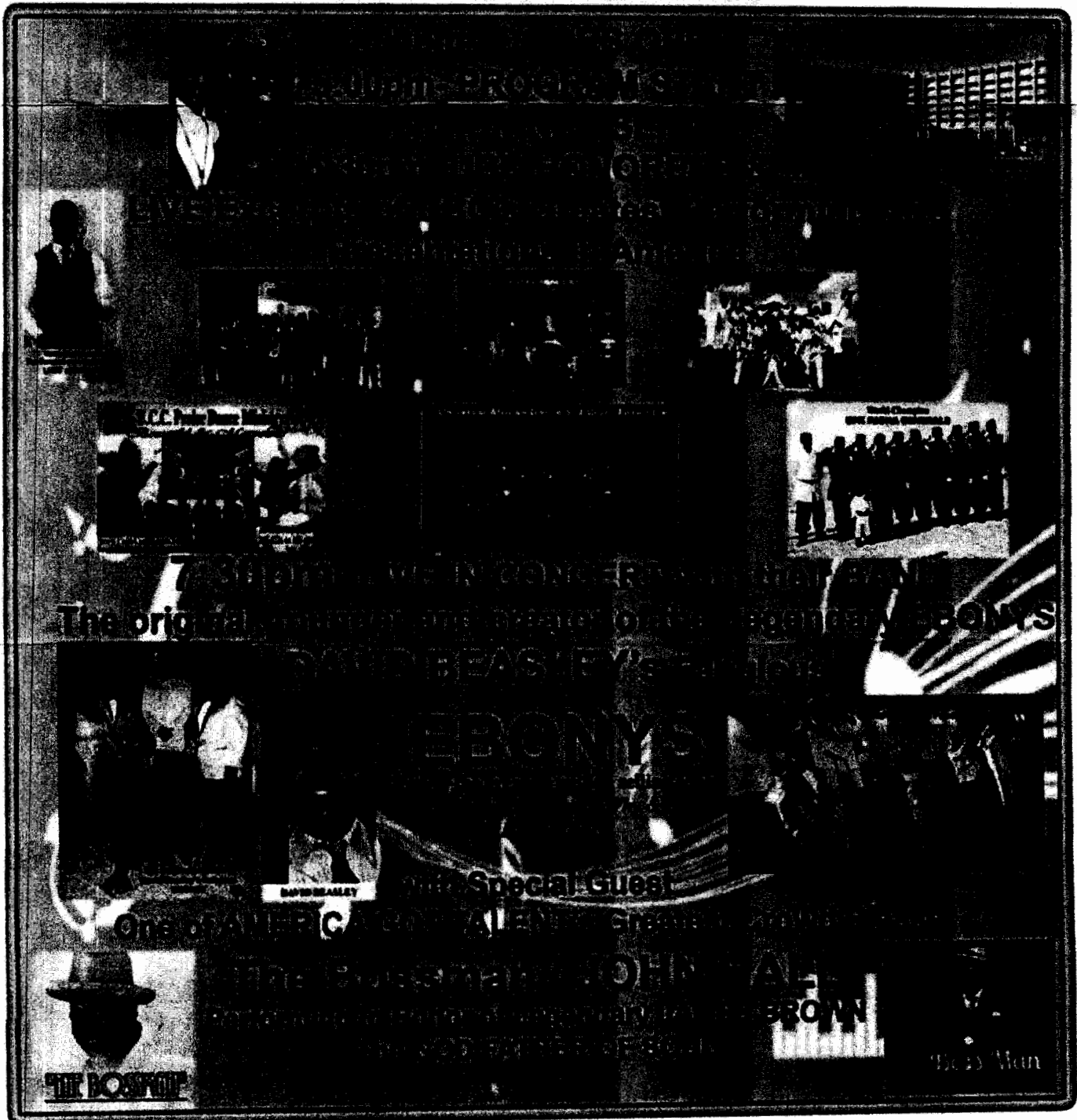

Sharon McCombs
Executive Director

The Unity Community Center
Camden, New Jersey

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ALDAN, PA 19018



7012 2920 0000 9869 7161

Unity Community Center ~~WTC~~
1544 Mt. Ephraim Ave 08/21
CAMDEN, NJ 08104

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**NJ Gov. Phil Murphy
visit Unity Community Center, Camden, NJ
07/04/2019**



**NJ Gov. Phil Murphy
visit Unity Community Center, Camden, NJ
07/04/2019**